IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

Bail Appl..No. 3871 of 2007()

CRIME NO. 238/07 OF KODAKARA POLICE STATION

PETITIONERS/ACCUSED

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1. BABU, S/O.THOMAS, PULLOKKARAN HOUSE,
   KANAKAMALA, THRISSUR DISTRICT.

2. SHIBU, S/O.ACHUTHAN, MADATHIKKAL HOUSE,
   KANAKAMALA, THRISSUR DISTRICT.

3. SAILESH, S/O.SHENKUNNI,
   VALIYAPARAMBIL HOUSE,
   KANAKAMALA, THRISSUR DISTRICT.

4. SOORIYA, S/O.VELAYUDHAN, KANAKAMALA
   THRISSUR DISTRICT.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENT/COMPLAINANT:

THE SUB INSPECTOR OF POLICE, KODAKARA,
REP. BY: THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 3871 of 2007

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Dated this the 27th day of June, 2007

O R D E R

Application for anticipatory bail. Petitioners are accused 1 to 4. They along with the co-accused face allegations under Section 379 r/w. 34 I.P.C. The crux of the allegations against the accused persons is that they with fraudulent intent removed the iron rods inside concrete electric posts of the K.S.E.B. and removed the same in an autorikshaw. The F.I. statement was lodged by an official of the K.S.E.B. Investigation confirms the allegations. In the F.I.R. the petitioners do not figure as accused. The only allegation is that the 5th accused and some others had illegally removed the iron rods after destroying the cement covering in the concrete posts. The petitioners have now been arrayed as accused. Investigation is in progress. They apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The 5th accused, an autorikshaw driver, has already been arrested and the stolen article has been recovered. In these circumstances it is not necessary at all to insist

that the petitioners must suffer arrest and incarceration in prison. The learned counsel for the petitioners prays that anticipatory bail may be granted to the petitioners.

3. Powers under Section 438 Cr.P.C. are to be invoked sparingly and in exceptional cases, that too, only in aid of justice. Such extra ordinary equitable discretion is not to be invoked as a matter of course. Even the fact that the accused persons may be entitled for regular bail is no sufficient justification for this Court to invoke the equitable discretion under Section 438 Cr.P.C. When the power of arrest vested in the State and its officials are about to be misused for oblique motive or malafide purposes or such arrest, though not malafide, is likely to result in unjustified hardship and prejudice of an exceptional variety, the court would be justified in invoking its discretion. I do not find any such circumstance available in this case, which can persuade this court to invoke such jurisdiction. This I am satisfied is a fit case where the petitioners must resort to the ordinary and regular procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course. Needless to say, if the petitioners so surrender before the Investigating Officer or the learned Magistrate and

apply for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

4. This application is accordingly dismissed with the above observations.

(R. BASANT)
Judge

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